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Case Digests

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FEDERAL CONTRACTS; State Law Applicable

Defendant, a married woman, executed a note for a loan from the Small Business Administration. The federal government sued on the note, and the defendant pleaded the Texas rule that a married woman can not be held upon a contract. The district court held that the state law applied and sustained the defense. *Held:* Judgment affirmed. The state law of contracts applies even to contracts with the federal government. *Dissent:* A loan from the federal government is a federal matter and should be governed by federal law. *United States v. Yazell,* 334 F.2d 454 (2d Cir. 1964).

FULL FAITH AND CREDIT; Jurisdiction Over Real Property

Petitioner brought a quiet title action in Nebraska involving land affected by a change in the course of the Missouri River. The respondent appeared, challenged the jurisdiction of the Nebraska court and fully litigated that issue. The Nebraska court, in ruling for petitioner, held that the land belonged to Nebraska, and that it had jurisdiction. Two months later, the respondent brought suit in a Missouri court to quiet title to the same land, alleging that the land belonged to Missouri. The action was removed to the federal district court, which held that the respondent was barred by res judicata. The court of appeals reversed. *Held:* Judgment of district court affirmed, reversing the court of appeals. The Court's ruling that res judicata barred respondent's second suit made applicable to jurisdiction over real property the general rule that a judgment is entitled to full faith and credit even as to questions of jurisdiction when the second court inquiry discloses that those questions had been fully and fairly litigated and finally decided in the court which rendered the original judgment. The Court noted, however, that this did not bind either state as to the boundary between them. Mr. Justice Black concurred, with the understanding that the Court did not decide whether respondent would continue to be barred if the two states, either in court or by agreement, subsequently decided the land actually belonged to Missouri. *Durfee v. Duke,* 375 U.S. 106 (1963).

LANDLORD AND TENANT; Covenant to Repair; Liability

Plaintiff leased a house from the defendant under an agreement whereby the defendant agreed to keep the premises in repair. During the tenancy, the gutters and downspouts became defective,

allowing water to fall from the roof and collect and freeze on a concrete walk. The defendant, although notified of the defect by plaintiff, failed to make the necessary repairs. Subsequently, the plaintiff slipped on the ice which had collected because of the defect and was injured. A jury verdict was rendered in favor of the plaintiff. *Held:* Judgment affirmed. The court held that, although jurisdictions are equally split on whether a landlord may be liable for personal injuries caused by an unreasonable risk resulting from a breach of a covenant to repair, the better rule is to allow recovery. In doing so, the court adopted the rule announced in section 357 of the Restatement of Torts. *Dissent:* Liability for personal injuries was not within the contemplation of the parties at the time of the making of the covenant to repair. *Zuroski v. Strickland,* 176 Neb. 633, 126 N.W.2d 888 (1964).

PARENT AND CHILD; Child Custody; Religious Factor

The mother, a professed agnostic, sued the father, a person active in church affairs, for custody of their child. The trial judge found that both parents were fit and proper persons to have custody of the child but that a home in which a firm faith in the deity is professed is preferable to one in which doubt, skepticism or agnosticism is professed, and thus awarded custody to the father. *Held:* Judgment reversed. The religious attitudes of either parent are irrelevant in determining who shall have custody of a child as long as those attitudes can not reasonably be considered dangerous to the child's health or morals. Such a case might be presented, said the court, where a parent's religious beliefs would prevent a child's receiving blood transfusions. The fact that the mother was an agnostic did not override the preference in favor of the mother in custody cases. *Welker v. Welker,* ___ Wis. ___, 129 N.W.2d 134 (1964).

SERVICE OF PROCESS; Designated Agent

Respondent, a farmer residing in Michigan, leased farm equipment from petitioner, a corporation operating in New York, and signed petitioner's printed form lease. One of the provisions of the lease stated that "the Lessee hereby designates Florence Weinberg . . . as agent for the purpose of accepting service of any process within the State of New York." Florence Weinberg was not known to respondent but was related to an officer in petitioner corporation. Petitioner sued respondent for overdue payments and summons was served on Weinberg, who in turn notified respondent. Respondent maintained that the service was invalid; petitioner contended it was valid under Rule 4(d) (1) of the Fed-

eral Rules of Civil Procedure, allowing service on authorized agents. The district court quashed the summons and the court of appeals affirmed. *Held:* Judgment reversed. A party to a private contract may appoint an agent to receive service of process within the meaning of Rule 4(d)(1) even though the agent is not personally known to the party and the agent has not expressly undertaken to transmit notice to the party. The Court suggested that if Weinberg had not notified respondent the agency would have been invalidated. *National Equip. Rental Ltd. v. Szukhent,* 375 U.S. 311 (1964).

SUBSCRIPTIONS; Compliance with Expressed Purpose

Defendant charity in 1951 solicited by subscription funds for acquiring a site and erecting a new building. Plaintiff's testator pledged and paid $1000 toward this fund. In 1956 the defendant resolved not to rebuild but to apply the fund toward maintenance of the old building and establishment of a parochial mission. Plaintiff, as executor of his testator's estate, requested return of the $1000 and was refused. The district court held for the defendant. *Held:* Judgment reversed. If a charity raises funds by subscription for a particular purpose and subsequently abandons that purpose, the donors may reclaim their contributions in an action at law for money had and received. *Barker v. Wardens & Vestrymen of Saint Barnabas Church,* 176 Neb. 327, 126 N.W.2d 170 (1964).

TAXATION; Recovery of Penalty

Plaintiffs sought to recover invalidly assessed property tax penalties under section 77-1735 of the Nebraska Revised Statutes, which allows such a suit to recover an invalid "tax." The defendant, treasurer of the City of Lincoln, argued that although the statute provided a remedy for recovery of taxes, it did not apply to recovery of penalties, and relied on earlier cases holding that penalties were not a part of the tax within the meaning of Article VIII, section 4 of the Nebraska Constitution, prohibiting legislative remission of taxes. The district court dismissed the action. *Held:* Judgment reversed. Although a penalty is not part of the tax within the meaning of the Nebraska Constitution preventing their remission, such penalties have some of the attributes of the tax with respect to their distribution. The action should be allowed. *Misle v. Miller,* 176 Neb. 113, 125 N.W.2d 512 (1963).

WORKMEN'S COMPENSATION; "Employee" defined

The decedent was a member and stockholder of a golf club which passed a resolution whereby each member was assessed five hours of labor on the course or, in the alternative, $5.00. The decedent chose the former and was killed while thus employed. The decedent's claimant contended that the decedent was an "employee" within the meaning of the Workmen's Compensation Act and entitled to compensation. The Industrial Commission held for the claimant and was reversed by the district court. *Held:* Judgment of district court reversed, and findings of Industrial Commission affirmed. The Iowa court said that since the resolution and other evidence illustrated that its provisions were mandatory and not voluntarily assumed, the decedent was an "employee" and thus entitled to compensation. *Usgaard v. Silver Crest Golf Club,* ___ Iowa ___, 127 N.W.2d 636 (1964).